

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MAXIMINO ESTRADA

Petitioner,

vs

9:05-CV-549

CALVIN WEST

Respondent.

APPEARANCES:

OF COUNSEL:

MAXIMINO ESTRADA, 02-B-0918
Petitioner pro se
Elmira Correctional Facility
PO Box 500
Elmira, NY 14902

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LEILANI J. RODRIGUEZ, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Petitioner Maximino Estrada brought this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 19, 2008 the Honorable David R. Homer, United States Magistrate Judge, advised, by Report-Recommendation, that the petition be denied and dismissed and that no certificate of appealability be issued. Petitioner filed timely objections. Respondent responded to the objections urging adoption of the

Report-Recommendation.

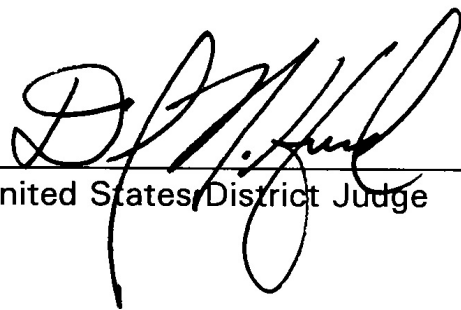
Based upon a de novo determination of the portions of the report and recommendations to which petitioner objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 Cases.

Accordingly, it is

ORDERED that

1. The petition for a writ of habeas corpus is DENIED and DISMISSED; and
2. A certificate of appealability will not be issued.

IT IS SO ORDERED.



United States District Judge

Dated: March 31, 2009
Utica, New York.